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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,179

09/30/2003

Loring Pickering

5920

7590

07/21/2004

Loring Pickering  
598 Park Blvd.  
Ukiah, CA 95482

EXAMINER

FRANCIS, FAYE

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/675,179

Applicant(s)

PICKERING ET AL.

Examiner

Faye Francis

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 and 4-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 4, 5 and 7 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Miller.

Miller discloses in Figs 1-7, a device including a handle member having a proximate end and a distal end [Fig 1], a gripping portion [handles 12 and 14] disposed at proximate end and a C shaped curved element [Fig 1] having a first segment [jaw 16a] and a second segment [jaw 16b] and the handle member includes a plurality of telescopic sections connected in telescopic relationship [shaft 28 slides within the hollow shaft 24].

Since the device disclosed in the reference includes all of the structural elements of the claims it is presumed to be inherently capable of all the claimed functions such as those set forth in the preamble of the claim including the ability to throw and catch a disc.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Johnsen and Minneman et al, hereinafter Minneman.

Perkins discloses in Figs 1-2, a flying disk accessory comprising: a C shaped member [yoke 14], a handle member 16 having a gripping portion [the thicker part of the handle 16] at one end and an attached elongated rod shaped [the narrower part of the handle 16] at the opposite end. Additionally, Perkins discloses, the C shape having a U shaped cross section [channel 26] where the legs of the U shape are facing toward the center of the C shape, the C shape having a hinge joint [pivot 18 and elastic band 36] near the junction of the C shape so that the rod portion is fixedly joined to the lower portion of the C shape.

Perkins does not disclose a spring biased hinge joint and the C shape ends each curving outwardly in the opposite direction of the curve of the main body of the C shaped member and the requirement that the handle member includes a hinge pin.

Johnsen teaches that it is conventional to have a target thrower device having a spring, biased hinge joint [col 1 lines 6-13] in order to have a considerable movement relative to the handle. It would have been obvious to one of ordinary skill in the art at the time the invention was made, in view of Johnsen to provide the device of Perkins with spring, biased hinge joint in order to control the movement of the C shaped member [yoke 14] with respect to the handle.

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Furthermore, Johnsen is cited to show a desirability, to have target holder including two ends curving outwardly in the opposite direction of the curve of the main body. It would have been obvious to further provide the modified device of Perkins with the missing elements as taught by Johnsen in order to easily project the target and with greater velocity and accuracy or as a design expedient.

Minneman teaches the concept of providing a disk thrower device with a handle member [neck 30, adjuster 12 and handle 10] having a hinge pin [fastener 54]. It would have been obvious to further provided the handle in the modified device of Perkins with the hinge pin as taught by Minneman in order to move the yoke to different positions.

Since the device disclosed in the reference includes all of the structural elements of the claims it is presumed to be inherently capable of all the claimed functions including the ability to be fold during shipping and storage.

5. Claims 4-5 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Camp.

Perkins discloses most of the elements of these claims as stated above.

Perkins does not disclose the curved element having a first segment and a second segment that may be moved relative with each other.

Camp teaches the concept of providing a disk thrower device with a curved element having a first segment [arm 4] and a second segment [arm 11] that may be moved relative with each other. It would have been obvious to further make the curved element in the device of Perkins to have a first segment

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and a second segment as taught by Camp so that the target can be thrown from the hand in an effective manner.

Since the device disclosed in the reference includes all of the structural elements of the claims it is presumed to be inherently capable of all the claimed functions such as those set forth in the preamble of the claim including the ability to throw and catch a disc.

6. Claim 6 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Camp as applied to claim 4-5 above and further in view of Johnsen.

Modified device of Perkins discloses most of the elements of these claims as stated above.

Modified device of Perkins does not disclose the curve element curves outwardly in the direction opposite of the main body of the C shape.

Johnsen is cited to show a desirability, to have target holder including two ends curving outwardly in the opposite direction of the curve of the main body. It would have been obvious to further provide the modified device of Perkins with the missing elements as taught by Johnsen in order to easily project the target and with greater velocity and accuracy or as a design expedient.

7. Claim 8 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Perkins in view of Camp as applied to claim 4-5 above and further in view of Minneman.

Modified device of Perkins discloses most of the elements of these claims as stated above.

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Modified device of Perkins does not disclose that the handle member includes a hinge pin along the handle.

Minneman teaches the concept of providing a disk thrower device with a handle member [neck 30, adjuster 12 and handle 10] having a hinge pin [fastener 54]. It would have been obvious to further provided the handle in the modified device of Perkins with the hinge pin as taught by Minneman in order to move the curved element to different positions.

Since the device disclosed in the reference includes all of the structural elements of the claims it is presumed to be inherently capable of all the claimed functions including the ability to be fold during shipping and storage.

### ***Response to Arguments***

8. Applicant's arguments filed 5/6/04 have been fully considered but they are not persuasive.

In response to applicant's argument that the present invention is directed particularly to a hinge pin in the handle portion of a disc throwing and catching device to fold the handle on itself for storage and shipping, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 703-306-5941. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700